



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**FILED**

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In the matter of the Application of the Exposition )  
Metro Line Construction Authority for an order )  
authorizing the construction of a two-track )  
at-grade crossing for the Exposition Boulevard )  
Corridor Light Rail Transit Line across Jefferson )  
Boulevard, Adams Boulevard, and 23<sup>rd</sup> Street, )  
all three crossings located along Flower Street in )  
the City of Los Angeles, County of Los Angeles )  
California. )  
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Application 06-12-005  
(Filed December 6, 2006)

Application 06-12-020  
(Filed December 12, 2006)

Application 07-01-004  
(Filed January 2, 2007)

Application 07-01-017  
(Filed January 8, 2007)

And Consolidated Proceedings. )

Application 07-01-044  
(Filed January 24, 2007)

Application 07-02-007  
(Filed February 7, 2007)

Application 07-02-017  
(Filed February 16, 2007)

Application 07-03-004  
(Filed March 5, 2007)

Application 07-05-012  
(Filed May 8, 2007)

Application 07-05-013  
(Filed May 8, 2007)

**NEIGHBORS FOR SMART RAIL’S MOTION FOR RECONSIDERATION OF THE  
SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER CONCERNING  
WESTERN AVENUE/EXPOSITION BOULEVARD CROSSING (A.) 07-02-007**

Neighbors for Smart Rail (“NFSR”), identified as an interested party in the above-captioned consolidated proceedings, is a non-profit California Corporation comprised of a coalition of homeowners’ associations, community groups and unaffiliated citizens who support the development of “smart” transportation solutions for Los Angeles that are safe, well-planned, efficient and conform to the highest federal standards. It is in the interest of those goals that we submit the motion herein.

**I. GROUND FOR NFSR’S MOTION TO RECONSIDER**

NFSR moves herein for reconsideration of the Scoping Memo and Ruling of Assigned Commissioner Determining the Scope Schedule and Need for Hearing (“Scoping Memo”), regarding Application (A.)07-02-007. Specifically NFSR requests an evidentiary hearing for the crossing at Exposition Boulevard and Western Avenue. The Western Avenue crossing serves, and is in the immediate proximity of the Foshay Learning Center (“Foshay”), a school which is attended by over 3,500 students from grades K through 12. This motion is made pursuant to California *Code of Civil Procedure* 1008(a)<sup>1</sup> which provides that:

“any party affected by an order an order may, within 10 days after service, based upon new or different facts, circumstances, or law may make application to the same judge or

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<sup>1</sup>Alternately, NFSR requests herein that the Administrative Law Judge consider the newly discovered evidence, e.g. the November 14, 2007 Resolution of the Board of the Los Angeles Unified School Board for his Proposed Decision.

court that made the order, to reconsider the matter and modify, amend or revoke the order.”

In this instance, although this motion is being made more than ten days after service of the Scoping Memo, it is predicated upon, and being filed within, ten days of the issuance of the November 13, 2007 Resolution of the Los Angeles Unified School Board, which on that date resolved that:

“...the District is opposed to the operation of any at-grade design of the Expo Light Rail Line along streets in close proximity to school sites, unless it is demonstrated that alternative mitigation measures will eliminate all safety hazards...” (A copy of that resolution is attached hereto as Exhibit “A” TO THE ATTACHED Declaration of Colleen Mason-Heller).<sup>2</sup>

This resolution was not passed, and therefore not available to moving party, NFSR, until last week. NFSR has promptly filed the motion herein after being apprised of the existence of this new “fact” and “circumstance.” More importantly, the Board’s resolution was predicated upon its recognition that:

“Whereas, The Property Line of Foshay Learning Center, with a student population of over 3,400,<sup>3</sup> is within **50 feet** of the proposed at-grade Expo Rail Line

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<sup>2</sup>In fact, Expo bragged in their Reply Brief that “none of the referenced agencies have protested or otherwise opposed any of the Expo Authorities Applications consolidated in this proceeding, to the contrary...especially the Los Angeles Unified School District (has not protested or otherwise opposed).” As we now know, and as Expo no doubt recognized at the time of the writing of their brief, this assertion was, plainly speaking, untrue.

<sup>3</sup>In fact, NFSR has been informed that there are presently 3,599 students at Foshay.

Crossing;” (Exhibit “A”–bolding added).<sup>4</sup>

**II. IF THE SAFETY CONSIDERATIONS ATTENDANT TO DORSEY HIGH SCHOOL MANDATE AN EVIDENTIARY HEARING, *A FORTIORI* THE FOSHAY CROSSING DESERVES TO HAVE THE SAME HEARING**

Wisely, the Commissioner held in the Scoping Memo that an evidentiary hearing was necessary with respect to the issues raised in Application (A.) 07-05-013, the crossing at Farmdale Avenue and Exposition Boulevard which is within immediate proximity of Dorsey High School. The Commissioner ruled that an evidentiary hearing was necessary with respect to the issues raised in regard to the Farmdale crossing because “the proposed crossing is adjacent to Dorsey High School” which results in “high volumes of pedestrian and vehicular traffic at the crossing...including issues (relating to) the special needs of student populations...” (Scoping Memo, p. 6).

But, whereas at Farmdale the Exposition Construction Authority (“Expo”) at least went through the motions of trying to mitigate that “tragedy-in-waiting” for the affected high school students, in what can only be categorized as a shamefully insensitive and cavalier attitude towards the safety and very lives of over 3,500 children (ranging from ages 5 through 18 at Foshay), Expo has not even attempted to apply the most rudimentary mitigation. Whatever procedural defects (if any) may exist with respect to the timing of this motion, they are surely overcome by the Commission’s explicit duty to protect “the special needs of a student

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<sup>4</sup>The School Board correctly notes that the Metro Blue Line “has become the nation’s deadliest and most accident prone light rail line in the country (and that) the proposed street running designs from the intersection of 11<sup>th</sup> and Flower Streets to Arlington Avenue and Exposition Boulevard (which includes the Western/Foshay crossing) is “the exact replica of the most accident prone portion of the MTA’s Blue Line.”

population” (Scoping Memo, p. 6). Indeed, the “special needs” of the student population at Foshay, recording 1124 peak hour crossings by Expo in August of 2006, are far more compelling than those of Dorsey High School and, as noted, the mitigation, or lack thereof, proposed by Expo for this crossing is far less extensive.

For instance, whereas Dorsey serves some 1,600 students, Foshay serves over 3,500 students, more than twice as many as Dorsey. Whereas Dorsey’s student population consists of only high school students, grades 9 through 12, Foshay has students as young as **5 years old**. Whereas Dorsey serves substantially an African American population, with students and parents that are fluent in reading and understanding English, and are much more familiar with American customs, a significant portion of Foshay’s population is Hispanic, newly arrived in this country and unable to read, write or understand English. Whereas the Dorsey crossing has quad gates, lights, bells, “holding pens” and other mitigating factors in an (albeit, NFSR maintains, failed) attempt to protect their students, Foshay does not even have simple gates, instead relying on an LED sign to protect children from an at-grade, street running train, traveling 35 mph, 30 times an hour.

Exacerbating this dangerous mixture of fast moving trains and a highly vulnerable special population is the fact that Western Avenue is one of the most heavily traveled north/south thoroughfares west of downtown Los Angeles and will be even more heavily traveled as a result of Expo’s closing of three intersections adjacent to Western Avenue (Hobart Boulevard, Harvard Boulevard <sup>5</sup> and La Salle Avenue). Western Avenue also runs the busiest MTA bus lines in the

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<sup>5</sup>As noted below, Expo relies heavily on a tunnel running under Exposition Boulevard which, according to Expo, students will utilize rather than hopping the proposed fencing running along the tracks, or walking blocks out of their way to the Western Avenue crossing (which has

city, carrying some 50,000 passengers daily. As if this imperiling mix of heavy car and bus traffic and pedestrian flow (the latter consisting of vulnerable children), does not present a hazardous enough environment, Expo is going to construct two light rail platforms, both east and west of Western Avenue, which it admits will increase area pedestrian traffic density through the daily addition of some 1,200 passengers. The split platform stations and will impair the line of sight of east/west vehicular traffic traveling along Exposition Boulevard increasing the hazard of the legal and allowable left and right hand turns across the tracks from all four sides through the intersection (Expo Reply Brief, p. 23). This resulting scenario poses an unreasonable safety risk to the students from Foshay who will necessarily have to cross here when the Harvard Pedestrian tunnel is closed, which it currently is save for one hour a day.

### **III. EXPO'S TWO MITIGATION MEASURES: A FENCE AND A TUNNEL**

#### **A. The Tunnel**

Expo proposes to mitigate this tragedy-in-waiting, particularly the risk of traumatic injury and death to minors, through the use of an existing pedestrian tunnel at Harvard Boulevard (one block east of Western Avenue) running under the trains on Exposition Boulevard which will be manned by "Foshay Learning Center staff." (Expo Reply Brief, p. 6). But that tunnel is only open from **7:00 to 7:30 a.m. and 3:15 to 3:45 p.m. on school days**,<sup>6</sup> failing to comport with the staggered scheduled hours that these children will be going to and from their school.

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its own dangers, lacking any gates or other barricades to prevent students from entering the tracks). That tunnel, to the extent it is utilized at all, or more importantly to the extent it mitigates the inherent safety hazards of the subject crossing and the adjacent area (see below), will be rendered that much less attractive by the fact that the street leading to it will be, in effect, closed.

<sup>6</sup>All of the facts stated herein are evidenced by the attached Declaration of Colleen Mason-Heller.

Approximately 140 elementary school children start classes at 8:30 and end at 2:45. After-school activities and community services at the school often run well into the evenings. The tunnel will not be open at night when students attend the myriad of after-school and other activities offered by Foshay (see below).

Expo's claim that it has "formed a working relationship with LAUSD to address concerns relating to specific schools along the Expo Rail corridor" (Expo Brief, p. 23) is, at best, an erroneous assessment of their efforts to protect these relatively defenseless schoolchildren as they enter the dynamic envelope of the train crossing at Western and Exposition several times a day. NFSR believes, given the following facts which have never been referenced or assessed, and are probably unknown to Expo, that Expo has consciously disregarded the safety of these children<sup>7</sup> by creating an unreasonable and irresponsible safety hazard for the Foshay community :

- Foshay holds California High School Exit Examination classes and student enrichment classes that services upwards of 500 students every Saturday throughout the year. The tunnel is not open on Saturdays.
- Foshay is classified as a "Program Improvement Status 5 School" and thus Monday, Wednesday and Thursday holds Extended Day enrichment and remedial classes attended by up to 250 students until 5:00 p.m. Daily after school tutoring by LA Bridges, Beyond the Bell, and the after school

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<sup>7</sup>As indisputably evidenced by the Public Participation Hearing on Farmdale held at Dorsey High School, which was in reality publicized by Expo Communities United, once the community, parents and affected schools are apprised of the dangers of a crossing, they turn out and protest in droves. The Dorsey Public Participation Hearing made it clear that Expo has failed to properly inform the public, and failed to comply with the requirement of *In re San Mateo* to obtain "the concurrence of local community and emergency authorities."

Youth Services program keep additional kids on campus after dismissal from classes..The tunnel is closed when they leave school grounds.

- Foshay fields numerous athletic girls' and boys' teams (Freshman, Junior Varsity, Varsity, etc.), including multiple teams for volleyball, basketball, tennis, track & field and soccer, which all have after-school practices and games into the evening hours, after the tunnel closes at 3:30 p.m. Then there are of course the myriad of after-school clubs at Foshay that are attendant to any school: chess club, French club, cheer club, academic decathlon team practice, the list goes on and on. **No tunnel access.**
- The Foshay Elementary School commences classes at 8:30 a.m. and dismisses at 2:45. Accordingly, when those students, many dropped off and therefore unattended, go to school the tunnel is closed. They will potentially cross these tracks, **warned only by an LED sign** (there are no audible warnings other than the horn the train blows).
- USC administrates and maintains an on-campus free health care clinic which is open 6:00 a.m. to 6:00 p.m. year round, where students and their families meet with health care professionals. Consequently, there are generally over 4000 community residents and students on campus, many of them late into the evening taking advantage of the only health care facility available to them.
- USC also partners with Foshay at the Family Center on campus which provides parenting classes and access to social workers, mostly outside the



hours the tunnel is open. The area parents, lacking child care facilities, most often bring their youngsters with them.

- Foshay is a “collector site” where dozens of area students assemble at 6:30 a.m. (well before the tunnel is opened) to be bussed to schools at other locations. That is in addition to the regular school bus schedule that brings children to school at Foshay.
- Foshay is a “Concept 6 School” operating year-round with 4 separate academic tracks, often at times (summer, holidays) when there is no staff available to open and supervise the tunnel.
- 33% of the student population at Foshay are “English Learners”, who can at best be characterized as not proficient in the English language.
- Foshay has a significant disabled student population. Yet neither the crossing itself, nor the tunnel, are ADA compliant.<sup>8</sup>

NFSR offers that the single mitigation of an “LED Sign” added to existing signalization at the light rail crossing at Western and Exposition is woefully inadequate to guarantee safe passage of students, their families and the community. The unmitigated hazards inherent in Expo’s reliance on the existing vintage tunnel, which is sporadically open, for the single pedestrian passage between Denker Avenue and Western Avenue is a fatally flawed plan resulting in a dangerous gamble with the lives of pedestrians.

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<sup>8</sup>It has always struck NFSR as rather ironic, that every mom and pop grocery store has to comply with the American Disabilities Act, but, for some unspecified reason Expo does not have to do so, and, rather arrogantly not only makes no effort to comply, but doesn’t even mention the Act in its submissions.

Also unexamined, and possibly not even considered, is the question of the tunnel's structural integrity. What will the effect of 675 tons of rail cars (coupling three rail cars weighing some 225 tons each) passing over this rather ancient tunnel hundreds of times per day have on the structural integrity of the tunnel. Nowhere has Expo considered this issue, made mention of it, nor have they published or provided any engineering analysis of it. It occurs to NFSR that Expo is creating a hazardous situation that it is then relying on LAUSD to mitigate and manage. NFSR respectfully asks to which agency will aggrieved families seek redress in the face of a catastrophic incident on the tracks near Foshay?

In light of these facts Expo's assertion in its Opening Brief that "students will use an existing pedestrian under crossing monitored by a Foshay school employee to help ensure safe pedestrian crossing..." (Expo Opening Brief, p. 24) would be laughable, if it were not so potentially tragic.

**B. The Fence<sup>9</sup>**

Expo's only other futile attempt at providing a measure of "safety" is its proposed construction of a 6 feet tall chain link fence between Denker and Western along the train tracks. But chain link fences are an invitation for children to climb. Six feet? Many of the high schoolers will be able to virtually leap over the fence and it is no more than a simple climbing exercise for any of the younger students. Significantly absent in the application for the crossing is any indication of a fence as alluded to by Expo in their briefs in these proceedings. What assurance does the community even have that any fencing, however inadequate, will actually be installed?

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<sup>9</sup>Although Expo stated in its Reply Brief (p. 23) that it will be installing a six foot fence it is not a mitigation as applied for in its Application.

In legal terms this fence is no more than an “attractive nuisance”, amounting to *negligence per se*, wherein negligence is presumed and requires no proof.<sup>10</sup> Does anyone truly believe that students rushing to class will for one moment hesitate to scale the fence rather than walk over two blocks out of their way in order to traverse the Western Avenue or Denker Avenue crossings? And if they do, what will they find? No gates, no queuing areas, no crossing guards, merely an LED sign.

#### IV. CONCLUSION

Expo clearly believes and, at the very least, implicitly asserts, that the cost of a few children’s lives is the price that must be paid for the construction of its at-grade rail system, at least at this intersection. NFSR vehemently disagrees! And NFSR wants to make it imminently clear that when children and parents are injured and killed by these trains and the chaotic traffic situation that they will engender, NFSR and the parents of these children will turn to the CPUC and ask why the lives of these children were deemed so expendable so as to not even justify an evidentiary hearing<sup>11</sup> in order to fully evaluate the safety of this crossing. When it comes to the safety of this very vulnerable population NFSR will not parse words, the record must be made

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<sup>10</sup>Expo, as is its wont, relies heavily on the least important of the seven factors of practicability to justify keeping this crossing at-grade: the “comparative cost of an at-grade crossing with grade separation”. But even this factor mitigates against allowing this crossing to be at-grade, because the life cycle costs caused by vehicular accidents and pedestrian deaths and injuries, not only disrupt service, but damage equipment and, most importantly, lead to time consuming and expensive litigation. These costs will be far more expensive than the comparatively small sum saved by keeping the crossing at-grade.

<sup>11</sup>The hearing on the Western Avenue crossing will of course be conducted with the Farmdale crossing hearing, to be set sometime during or after January. Virtually, if not literally, the same witnesses will be utilized by the parties thereby adding perhaps one to two days to the hearing.

that when tragedy strikes no one, and certainly not this August administrative body, can say it was not duly warned, and that it is not fully responsible for any catastrophes that may result by its inaction.

Respectfully submitted,

/s/ COLLEEN MASON HELLER

Date: November 19, 2007

Colleen Mason Heller

Vice President, Neighbors For Smart Rail